

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MURLENE L. NOBLES and DEPARTMENT OF DEFENSE, DEFENSE
COMMISSARY AGENCY, EASTERN AREA, MAXWELL AIR FORCE BASE, AL

*Docket No. 99-2188; Submitted on the Record;
Issued September 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay for time loss during the period August 1 to 27, 1997; (2) whether the Office properly denied appellant's request for a review of the written record; and (3) whether the Office abused its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record on this appeal and finds that the case is not in posture for decision regarding the issue whether the Office properly denied appellant's claim for continuation of pay for time loss during the period August 1 to 27, 1997.

On July 22, 1997 appellant, then a 49-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that on that date she hurt her right ankle, her left side above the waist and scraped her left knee when she tripped on a step while going into a bank's front door. Appellant stopped work on July 22, 1997 and returned to work on July 28, 1997.¹

By letter dated October 6, 1997, the Office accepted appellant's claim for a right ankle sprain and multiple rib fracture on the left side.

Appellant filed a claim for continuing compensation on account of disability (Form CA-8) dated March 12, 1998 for the period August 1 to 27, 1997. In a May 20, 1998 letter to the employing establishment, the Office advised appellant to submit medical evidence supportive of her claim.

In response to the Office's letter, appellant submitted a May 26, 1998 medical report of Dr. Samuel J. Saliba, a Board-certified family practitioner, finding that she was unable to return to work until August 27, 1997.

¹ Appellant was terminated from the employing establishment on August 20, 1997.

By decision dated September 24, 1998, the Office denied appellant's claim for continuation of pay for the period August 1 to 27, 1997 on the grounds that the medical evidence of record failed to establish that appellant was disabled during the claimed period. In an October 23, 1998 letter, that was postmarked October 27, 1998, appellant requested a review of the written record by an Office representative.

By decision dated November 27, 1998, the Office denied appellant's request for a review of the written record.

In a January 14, 1999 letter, appellant requested reconsideration of the Office's September 24, 1998 decision denying her claim for continuation of pay accompanied by medical evidence.

By decision dated May 22, 1999, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that evidence submitted was of a repetitious nature and thus, insufficient to warrant review of the prior decision.

An individual who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of a compensation claim, including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.³

In the instant case, appellant met her burden of proof in establishing that she sustained a right knee sprain and multiple rib fractures on the left side in the performance of duty on July 22, 1997. However, whether a particular injury causes an employee disability for employment and the duration of that disability must be proved by a preponderance of reliable, probative and substantial medical evidence.⁴ In the instant case, appellant submitted Dr. Saliba's May 26, 1998 medical report. In this report, Dr. Saliba provided a history of appellant's July 22, 1997 employment injuries and medical treatment. He noted that he followed appellant closely and found that, due to severe pain, appellant was unable to return to work until August 27, 1997. Regarding appellant's absence from work during the period June 24 until "the date" in August, Dr. Saliba stated that it was medically necessary that appellant not have full employment at that time due to persistent swelling and multiple bony injuries. He, however, failed to provide any medical rationale explaining how or why appellant was unable to work until August 27, 1997.

Appellant also submitted Dr. Saliba's December 20, 1997 attending physician's supplemental report (Form CA-20a) revealing the date of her employment injury and a diagnosis of severe right ankle sprain, and left wall contusion and rib fracture. Dr. Saliba indicated that appellant's conditions were due to the injury, for which compensation was claimed by placing a checkmark in the box marked "yes." He further indicated that appellant was able to return to work in August 1997. The Board has held that an opinion on causal relationship which consists

² 5 U.S.C. §§ 8101-8193.

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Id.*

only of a physician checking “yes” to a medical form report question on whether the claimant’s disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ Dr. Saliba failed to provide any medical rationale to support his opinion.

While Dr. Saliba’s opinion that appellant was disabled from work until August 27, 1997 due to the July 22, 1997 employment injury is insufficient to discharge appellant’s burden of proving by the weight of the reliable, substantial and probative evidence that she was disabled due to this injury during the period August 1 to 27, 1997, his opinion constitutes sufficient evidence in support of appellant’s claim to require further development of the record by the Office.⁶ Dr. Saliba did not provide sufficient rationale to support his opinion; however, no evidence of record refutes that appellant was disabled during the claimed period due to the July 22, 1997 employment injury as alleged.

On remand, the Office should prepare a statement of accepted facts and refer the case record and appellant to a physician in the appropriate field of medicine for a rationalized medical opinion regarding whether appellant was disabled during the period August 1 to 27, 1997 due to her July 22, 1997 employment injury. Following this and any necessary further development, the Office shall issue a *de novo* decision.⁷

⁵ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁶ *See Horace Langhorne*, 29 ECAB 820 (1978).

⁷ In view of the Board’s decision on the issue whether appellant was entitled to continuation of pay, the issues regarding the denial of appellant’s request for a review of the written record and reconsideration are moot.

The May 22, 1999, November 27 and September 24, 1998 decisions of the Office of Workers' Compensation Programs are hereby vacated and the case remanded for further consideration consistent with this decision.

Dated, Washington, D.C.
September 11, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member